In The

Supreme Court of the United States

October Term, 1956

No. 738

Louis W. Nathan, Gaetano Alviti, Frank Tornabene, Patrick J. Knight and Joseph A. Giralamo,
Petitioners,

v.

The United States of America,
Respondent.

PETITION FOR REHEARING AND REVERSAL OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

To The Honorable, The Chief Justice and Associate Justices Of The Supreme Court Of The United States:

Petitioners, Louis W. Nathan, Gaetano Alviti, Frank Tornabene, Patrick J. Knight and Joseph A. Giralamo, respectfully pray for a rehearing and reversal of the Order herebefore entered on the 25th day of March, 1957, denying their Petition for a Writ of Certiorari to the United State Court of Appeals for the Seventh Circuit, on the following grounds:

1. The interpretation that will be placed on this Court's denial of the Petition for Certiorari will enlarge the conflict created by the decision in this cause as reported in 238 F.2d 401; that the further necessary effect

of said denial will be to increase the applications to this Court in an effort to resolve the conflicts.

2. The interpretation that will be placed on this Court's denial of the Petition for Certiorari will be that a specific intent in the crime of conspiracy is not required notwithstanding prior decisions of this Court and the United States Circuit Courts of Appeal to the contrary.

3. The interpretation that will be placed on this Court's denial of the Petition for Certiorari will suggest that the fixed burden on the prosecution in a criminal case to establish guilt beyond a reasonable doubt is subject to modification.

The Petitioners present this Petition for Rehearing by authority of and in compliance with provisions of Rule 58(2) of the Rules of this Honorable Court and will address themselves seriatim to the above reasons:

1. **THE INTERPRETATION THAT WILL BE PLACED ON THIS COURT'S DENIAL OF THE PETITION FOR CERTIORARI WILL ENLARGE THE CONFLICT CREATED BY THE DECISION IN THIS CAUSE AS REPORTED IN 238 F.2d 401; THAT THE FURTHER NECESSARY EFFECT OF SAID DENIAL WILL BE TO INCREASE THE APPLICATIONS TO THIS COURT IN AN EFFORT TO RESOLVE THE CONFLICTS.**

2. **THE INTERPRETATION THAT WILL BE PLACED ON THIS COURT'S DENIAL OF THE PETITION FOR CERTIORARI WILL BE THAT A SPECIFIC INTENT IN THE CRIME OF CONSPIRACY IS NOT REQUIRED NOTWITHSTANDING PRIOR DECISIONS OF THIS COURT AND THE UNITED STATES CIRCUIT COURTS OF APPEAL TO THE CONTRARY.**

In connection with these two grounds for rehearing above set forth, Petitioners will not restate the argument set forth in original Petition for Certiorari.

As support of the first two reasons for rehearing of the Petition, the Petitioners believe that it is desirable to call this Honorable Court's attention to the language of the United States Court of Appeals for the Seventh Circuit as set forth on pages 403, 404 and 405 of 238 F.2d reading as follows:

> [Page 403]
> "It may be true that the proof connecting some of the defendants with the conspiracy is rather weak but, even so, it was sufficient to take the case to the jury on that issue."
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> [Page 404]
> "The Government contends that the intent needed to support a conviction under Section 241 is the same intent which is required, as a general rule, by most criminal statutes and which was described by Mr. Justice Holmes in Ellis v. United States, 1906, 206 U.S. 246, at (page) 257 (27 S.Ct. 600, at page 602, 51 L.Ed. 1047): 'If a man intentionally adopts certain conduct in certain circumstances known to him, and that conduct is forbidden by the law under those circumstances, he intentionally breaks the law in the only sense in which the law ever considers intent.'"
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> [Page 405]
> "The apparent confusion in these decisions of the Supreme Court may be attributable, we think, to the sharp division which existed among members of the court and a failure to give proper recognition to the distinction which the court has made between violations of Sec. 241 and Sec. 242."

The strained discussion by the Circuit Court of the meanings of U. S. v. Classic, 313 U.S. 299, 61 S.Ct. 1031, 1035, and Screws v. U. S., 325 U.S. 91, 65 S.Ct. 1031, emphasize the conflict that is precipitated by the said

Circuit Court's decision. This is particularly true in its treatment of the concurring opinion of Justice Rutledge in the Screws case (supra).

Again the strained discussions of the Circuit Court are to be noted in reference to the Trial Judge's charge reading as follows:

> "'* * * if the defendants or any one of them or any two of them conspired to cast false votes for a federal candidate, the jury must find that the defendants conspired to injure citizens in the enjoyment of their civil rights.'"

In this connection the Circuit Court on the same page 408 observed:

> "Obviously, one person cannot engage in a conspiracy and the words, 'or any one of them', should have been omitted."

The Circuit Court determines that such an instruction was harmless error. It is the contention of the Petitioners that this portion of the Trial Judge's charge enlarged and exaggerated the denial of defendants' instructions as to specific intent.

3. THE INTERPRETATION THAT WILL BE PLACED ON THIS COURT'S DENIAL OF THE PETITION FOR CERTIORARI WILL SUGGEST THAT THE FIXED BURDEN ON THE PROSECUTION IN A CRIMINAL CASE TO ESTABLISH GUILT BEYOND A REASONABLE DOUBT IS SUBJECT TO MODIFICATION.

The Trial Judge as quoted at page 408, 238 F.2d instructed the jury as follows:

> "'You cannot look into a person's mind and see what his intentions are or were, but a careful and intelligent consideration of the facts and circumstances shown by the evidence in any case enables us to infer *with a reasonable degree of accuracy* what another's

intentions were in doing certain things.'" (Emphasis supplied)

The Circuit Court on the same page stated:

> "We think the phrase complained of was erroneous, at any rate its use was unfortunate and under some circumstances might be prejudicial."

There then follows more strained reasoning by the Circuit Court which it is respectfully urged does not remove the fact that the effect of the Trial Judge's words was to destroy the fundamental principal earlier announced that the burden was on the prosecution to prove guilt beyond a reasonable doubt.

In the face of these matters above discussed it is sincerely suggested to this Honorable Court that developments as in the case of U. S. v. The Ohio Power Co., (No. 312 October Term) decided by this Honorable Court on April 1, 1957, may and undoubtedly will confront this Honorable Court on many occasions.

This Honorable Court in the U. S. v. The Ohio Power Co. case (supra) notwithstanding two prior denials of petitions for rehearing on Petition for Certiorari and after expiration of term of Court, pointedly stated:

> "If there is to be uniformity in the application of the principles announced in those two companion cases, the judgment below in the instant case cannot stand."

The Petitioners urge that the "interest of justice" as suggested by this Honorable Court in the same Ohio Power Co. case (supra) apply with equal force to this case.

CONCLUSION

For the reasons above set forth it is earnestly contended that the Petition for Rehearing should be granted.

WILLIAM H. COLLINS,
RICHARD E. GORMAN,
DANIEL P. WARD,
Attorneys for Petitioners.

CERTIFICATION

I hereby certify that the above Petition for Rehearing is presented in good faith and not for delay and that said Petition is restricted to the grounds above specified.

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WILLIAM H. COLLINS
Attorney for Petitioners.

Dated: April 17, 1957.